

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FEB 23 2006

Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 92-291
Table of Allotments,)	RM-8133
FM Broadcast Stations)	
(Cambridge and St. Michaels, Maryland))	

To: The Commission

MOTION TO COMPEL

MTS Broadcasting, L.C. ("MTS"), licensee of radio station WCEM-FM, Cambridge, Maryland, and the proponent of a counterproposal in MB Docket No. 04-20, *Report and Order*, DA 05-3101 (AD December 2, 2005), hereby moves the Commission to compel CWA Broadcasting, Inc. ("CWA") to abide by the Commission's order in its *Memorandum Opinion and Order* (the "*Order*") in the above-referenced docket, 12 FCC Rcd 3504 (1997), to "submit to the Commission a minor change application for construction permit specifying" operation of WINX-FM at Channel 232A in St. Michaels, Maryland. In support of this motion, the following is stated:

1. On March 17, 1997, the Commission granted CWA's Application for Review and changed the community of license for WINX-FM (formerly WFBR) from Cambridge, Maryland to St. Michaels, Maryland. Having granted CWA's request, the Commission stated as follows: "Within 90 days of the effective date of this Order, [CWA] shall submit to the Commission a minor change application for construction permit (FCC Form 301), specifying the new facility." That directive is a standard requirement when the Commission grants a rulemaking petition which changes the FM Table of Allotments.

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2. In accordance with the *Order*, the FM Table of Allotments has been changed to specify Channel 232A at St. Michaels, Maryland instead of Cambridge, Maryland. *See* 47 C.F.R. §73.202(b).

3. Although it had requested the very relief granted by the *Order*, CWA never honored the Commission's directive to file a Form 301 construction permit application to relocate WINX-FM to St. Michaels. Instead, CWA initiated an effort to reallocate Channel 232 back to Cambridge, Maryland, because CWA had found a new transmitter site that could accommodate its operation in Cambridge, Maryland. However, the Commission never retracted its *Order* and instead directed CWA to file a new rulemaking petition if it decided it wanted to reallocate Channel 232 back to Cambridge, Maryland. *Cambridge and St. Michaels, Maryland*, 17 FCC Rcd 20425 (MB 2002).

4. CWA did in fact file a new rulemaking petition, but, in light of counterproposals filed by MTS and another party, the Media Bureau determined that the Commission's long-standing FM priorities required that Channel 232 remain in St. Michaels. *Report and Order*, DA 05-3101 (AD December 2, 2005). In the meantime, CWA has filed a reconsideration petition which argues, *inter alia*, that the Bureau should give equitable consideration to CWA's continued operation of WINX in Cambridge.

5. CWA is able to make the foregoing argument in its reconsideration petition only because it has knowingly defied the Commission's *Order* in the above-referenced docket. There is no authority for CWA's blatant refusal to abide by that *Order*.

6. Equitable considerations and the integrity of the Commission's processes require that licensees like CWA abide by obligations imposed by the Commission – especially when, as here, (a) the order was one actively pursued by CWA in the first instance and (b) CWA's refusal to abide by the order has been used by CWA to request relief in a separate proceeding (MM

Docket No. 04-20). *See Amendment of Section 73.202(b) (Milledgeville, Georgia)*, 10 FCC Rcd 7727 (P&R Div. 1995) (petitioner directed to file Form 301 application after Media Bureau advised of petitioner's failure to file application).

WHEREFORE, in view of the foregoing and the entire record herein, it is respectfully requested that the Commission compel CWA to file a construction permit application to implement the St. Michaels proposal adopted by the Commission in the above-referenced docket.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 2006 a copy of the foregoing "Motion to Compel" was hand-delivered or sent by first-class mail, postage prepaid, to the following:

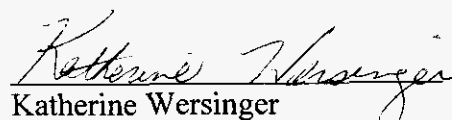
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